

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2581 of 2023

With

CRAN 1/2023

Sourav Paul

Versus

State of West Bengal & Another

For the Petitioner : Mr. Mrityunjoy Chatterjee, Adv.
Mr. Manas Das, Adv.
Mr. Arindam Poali, Adv.

For the State : Ms. Suman De, Adv.

Heard on : 08.01.2025

Judgment on : 26.02.2025

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been preferred by the petitioner/accused under Section 482 of the Code of Criminal Procedure, 1973 seeking for quashing of the proceedings being G.R. Case No. 1645 of 2022 arising out of Entally Police Station Case No. 210 of 2022 dated 30.06.2022 under Sections 153/500/501/509/505/120B of the Indian Penal Code, 1860 pending before the Court of the Learned Additional Chief Judicial Magistrate, Sealdah, South 24 Parganas.

2. The brief facts are relevant for the purpose of disposal of this case, are as under:

3. On 30.06.2022, a person named Saif Salim lodged a complaint alleging, *inter alia*, that on or before 29.06.2022, the present petitioner entered into a criminal conspiracy with other persons and broadcasted derogatory speech on social media platform 'YouTube' against the Hon'ble Chief Minister of the State of West Bengal and mocked her and other political leaders with sole intent to malign people and provoke breach of peace by endangering social harmony within the society.

4. On the basis of the said complaint, a case being Entally Police Station Case No. 210 of 2022 dated 30.06.2022 under Sections

153/500/501/509/505/120B of the Indian Penal Code, 1860 was registered against the present petitioner and others and initiated investigation thereof.

5. The petitioner was taken into custody on 06.07.2022 and was enlarged on bail on 07.07.2022 by the Learned Additional Chief Judicial Magistrate, Sealdah, South 24 Parganas.

6. After culmination of investigation, the Investigating Officer has submitted the Charge Sheet being Charge Sheet No. 162 of 2022 dated 30.09.2022 under Sections 153/500/501/509/505/120B of the Indian Penal Code, 1860 before the Learned Additional Chief Judicial Magistrate, Sealdah, South 24 Parganas only against the present petitioner herein. Thereafter, a cognizance was taken on 12.10.2022. The copy of the Charge Sheet and other related documents were supplied to the petitioner/accused on 19.04.2023.

7. According to the petitioner, he is completely innocent and in no way involved with the alleged offence. He has been falsely implicated into this case though he has no role in the commission of the alleged offence. The criminal proceedings are manifestly attended with a mala fide intention with an ulterior motive for wreaking vengeance on the petitioner. Therefore, according to him, the proceedings, if allowed to be continued, it would be a sheer abuse of

process of law and also caused great harassment to the petitioner. Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONER:

8. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is no way connected with the alleged offence and whatever allegations levelled against the petitioner, are out and out false.

9. It was further submitted that the Investigating Officer, without proper investigation, simply and mechanically filed Charge Sheet on the basis of table work as this case is related to the derogatory speech against the Hon'ble Chief Minister of the State of West Bengal though no sufficient prima facie materials are available or collected and/or indicated in the charge sheet.

10. The Leaned Trial Court, without applying his judicious mind or looking into the prima facie case, took cognizance under Sections 153/500/501/509/505/120B of the Indian Penal Code, 1860 only on the mere submission of charge sheet by the Investigating Officer. Cognizance taken by the Learned Magistrate is totally against the provision of CrPC and the order of taking cognizance, passed by the Learned Court below, is required to be set aside otherwise the entire proceedings would be an abuse of process of law and to secure the

ends of justice, the proceedings are also required to be quashed otherwise, the petitioner herein would suffer irreparable loss and injury on such false and fabricated allegations.

SUBMISSION ON BEHALF OF THE STATE:

11. On the other hand, learned counsel appearing on behalf of the State submitted that during investigation, sufficient materials were collected against the petitioner to establish a prima facie case under Sections 153/500/501/509/505/120B of the Indian Penal Code, 1860. Therefore, charge sheet has been submitted against the Petitioner.

12. It was further submitted that the petitioner was involved in broadcasting derogatory video and speech on the social media platform 'YouTube' against the Hon'ble Chief Minister of the State of West Bengal and mocked her and other political leaders with sole intent to malign people and provoke breach of peace by endangering social harmony within the society through YouTube channel. In view of the facts, this instant Criminal Revisional application is liable to be dismissed.

DISCUSSION AND FINDINGS OF THIS COURT:

13. Heard the arguments and submissions made by the rival parties and upon perusal of the case record, this Court finds allegation is although serious in nature as regard to the broadcasted derogatory video and speech in social media against the Hon'ble Chief Minister of the State of West Bengal and mocked her and other leaders during the campaign of assembly election 2021 but whether petitioner was ever genuinely involved in such allegation is a question to be decided.

14. The said broadcasting on social media platform i.e. YouTube post was allegedly circulated by the petitioner. But unfortunately, the Investigating Officer could not retrieve the video clips or contents of such broadcasting allegedly made by the petitioner herein. Investigating Officer only seized one blue colour Samsung mobile phone on 06.07.2022 between 18.05 hrs to 18.45 hrs from the petitioner during investigation.

15. It further appears that the Investigating Officer recorded statements of two witnesses, namely, Soheb Khan and Happy Khan under Section 161 of the CrPC. Both of them only stated that several derogatory speech or videos in the YouTube channel of Sourav Paul were noticed against the Hon'ble Chief Minister of State of West

Bengal and other leaders. However, no particulars of videos or contents have been narrated by them against the Hon'ble Chief Minister and other political leaders.

16. It further reveals from the perusal of their statements, no specific date, time and particulars of contents or video has been specified, while noticing such derogatory videos or speech in the YouTube channel has been disclosed.

17. From the entire case records, this Court does not find the mobile was sent for expert opinion to ascertain that the same gadget was used for broadcasting of alleged derogatory video or speech with sole intent to malign people and provoke breach of peace by endangering social harmony within the society. Furthermore, no data of video clips or speech was retrieved from the YouTube channel to substantiate at least prima facie allegations made by the complainant.

18. A Co-Ordinate Bench of this Court while hearing the instant Revisional application earlier passed an order in the present case, *inter alia*, as under: -

“Mr. Banerjee, learned advocate appearing for the State submits that he needs to take necessary instructions as to why the police authorities have not

dealt with regarding the contents which were the subject-matter for registration of the FIR.

The concerned officer would take instructions from his superior whether it is possible to retrieve or whether the data was retrieved and not placed along with the case diary. A report be submitted before this Court on the next date fixed for hearing.

List the revisional application under the same heading on 23.02.2024.

The interim order, earlier granted, is extended till 15.03.2024.”

19. Despite such specific direction, no conclusive or specific report was submitted by the State regarding involvement of the petitioner. Therefore, again vide order dated 11th March, 2024, a report was further called for by this Court to submit on the next date of hearing i.e. on 11th April, 2024 but the State further failed to explain.

20. In course of hearing, the learned counsel appearing on behalf of the State, on his candid, submitted that the investigating agency could not retrieve the data of video clips or speech from the YouTube channel or authority thereof and further stated there is also no possibility to retrieve the original data. Accordingly, the hearing

was concluded in presence of the State counsel and the learned counsel represented the Petitioner.

21. In view of the above facts and circumstances, this Court does not find any sufficient materials collected against the present petitioner to allow the proceedings to be continued against him because there is no possibility of conviction due to non-availability of sufficient materials. Non-fulfilment of ingredients of the offence as alleged and no data is available to substantiate the allegations. Even no other sufficient materials or link of conspiracy was also brought on record against the petitioner with regard to broadcasting of the defamatory video clips or speech with sole intent to malign people and provoke breach of peace by endangering social harmony within the society.

22. After careful scrutiny of the materials available in the case diary, this Court does not find any sufficient or cogent evidence or even prima facie case against the present petitioner. Mere filing of charge sheet without any material or shaky evidence would not suffice the purpose of continuing trial against the Petitioner.

23. Even if, for the sake of argument, if the proceeding is continued, the possibility of conviction of petitioner appears bleak and remote and as such the continuation of the criminal proceedings would put

the accused to great oppression and prejudice. Therefore, the continuation of the criminal proceedings would not be justifiable and to secure the ends of justice, the proceeding is deserved to be quashed under the inherent power granted under Section 482 of the CrPC insofar as the petitioner is concerned.

24. We should not forget at this moment the well-settled law declared by the Hon'ble Supreme Court in the case of ***State of Haryana & Ors. vs. Bhajanlal & Ors.***¹ which has laid down the basic points for consideration pursuant to which a complaint may be entertained in accordance with law before a Court of law. The Hon'ble Court has narrated down as to when the extraordinary power of this Court under Section 482 of the Code of Criminal Procedure, 1973 may be espoused. Relevant portion thereof may beneficially be quoted herein below: -

“102. This Court in the backdrop of interpretation of various relevant provisions of CrPC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power

¹ AIR 1992 SUPREME COURT 604 : 1992 Supp. (1) Supreme Court Cases 335

could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

25. In the light of above discussions made by this Court and in view of observations made by the Hon'ble Supreme Court in the above cited judgment, this Court fully satisfies that this case falls in the Categories mentioned in 1, 3, and 7 above.

26. Accordingly, **CRR No. 2581 of 2023** is **allowed**. Connected application being **CRAN 1 of 2023** is also, thus, disposed of.

27. Consequently, proceedings being G.R. Case No. 1645 of 2022 arising out of Entally Police Station Case No. 210 of 2022 dated 30.06.2022 under Sections 153/500/501/509/505/120B of the Indian Penal Code, 1860 in which Charge Sheet being Charge Sheet No. 162 of 2022 dated 30.09.2022 under Sections 153/500/501/509/505/120B of the Indian Penal Code, 1860 has been submitted against the Petitioner before the Court of the Learned Additional Chief Judicial Magistrate, Sealdah, South 24 Parganas is hereby quashed.

28. Let a copy of this Judgment be sent to the Learned Trial Court for information.

29. Case Diary, if any, is to be returned to the learned counsel appearing on behalf of the State.

30. Interim order, if any, stands vacated.

31. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)